

Serial No. 09/496,188

May 26, 2004

Page 7

**REMARKS**

Claims 1-21 remain pending in this application. Further reconsideration is requested.

**35 U.S.C. § 112 Rejection**

The rejections of claims 1-21 as being Indefinite are traversed to the extent that such grounds of rejection may be applied to the claims as amended herein. The claims have been amended to eliminate each of the alleged grounds of indefiniteness. For the record, however, it is maintained that the claims were in compliance with § 112 prior to amendment, in that each of the Examiner's objections is a result of improper consideration of the claim language in a vacuum. Instead, the claim language must be interpreted and construed in light of and in conjunction with the specification. Withdrawal of this ground of rejection is urged.

**35 U.S.C. § 101 Rejection**

The rejection of claims 1-10 and 21 as being directed to non-statutory subject matter is traversed. The Examiner's assertions regarding a "technological basis in the body of the claim" are irrelevant to any consideration of whether a claim defines statutory subject matter under United States patent law. This basis of rejection appears to be echoing requirements of the European Patent Office, which have no relevance to U.S. patent applications or to U.S. law.

Claims 1-10 and 21 are directed to a statutory method of for identifying a price at which to conduct a batch auction of a financial security, regardless of whether the method is performed by a computer or not. Contrary to the position of the Office action, neither a financial security, nor a batch auction of a financial security, nor identification of a price at which to conduct such an auction, constitute "abstract ideas." See State Street Bank & Trust Co. v. Signature Financial Group, Inc., 149 F.3d 1368, 47 USPQ2d 1596 (Fed. Cir. 1998), *cert. denied*, 525 U.S. 1093 (1999).

While it is true that the recitation of a structural or functional relationship has a "technological basis" as the Board of Patent Appeals and Interventions held in Ex part Bowman cited in the Office action, Bowman does not stand for the proposition

Serial No. 09/496,188

May 26, 2004

Page 8

advanced in the Office action – that is, lack of identification of a particular claimed “technological basis” does not necessarily mean that a claim is directed to non-statutory subject matter. Withdrawal of this ground of rejection also is respectfully urged.

### **35 U.S.C. § 103 Rejection**

Claims 1-21 stand rejected as being unpatentable over Madoff et al., U.S. Published Application No. 2002/0019795, in view of Lupien et al., U.S. Patent No. 5,101,353. The Office action proposes to “include determining existence of side of trade that would allow security to be traded by selecting a single price because Lupien et al (353) teaches matching of orders routine in automation of securities trading.” This ground of rejection is respectfully traversed.

The present invention as claimed is directed to identification of a price at which to conduct a batch auction of a financial security, wherein selection of price is carried out by first determining whether at least one order exists on each side of a trade, which includes price as an order parameter, and if so whether at least one purchase price is equal to or higher than at least one selling price. If these conditions are met, the process then determines whether there exists a single price at which a maximum number of shares of the security will be traded. If so, that single price is selected.

If not, then an imbalance ratio is calculated, and the selected price is determined based on the result of a comparison of the imbalance ratio to a predetermined reference value. In the event that no orders on opposite sides of a trade contain intersecting prices, then a predetermined reference price is used as the selected price.

In contrast to the present invention, Madoff discloses a process for determining an opening price (i.e., a price at which to begin trading at the opening of market hours), which first determines whether there is an imbalance between the two sides (i.e., buy vs. sell) of received market orders. If so, an imbalance message is sent to the participants, which includes the size of the total imbalance. The process then determines an anticipated share allocation among participants in accordance with each participant's gross contribution to all orders, and sends an anticipated share allocation message indicating the quantity of shares that a participant may expect to be allocated for execution at the opening.

Serial No. 09/496,188  
May 26, 2004  
Page 9

After these messages have been sent, the market makers are free to adjust their quotes and effect trades prior to the opening, and thus, the imbalance messages and anticipated share allocation messages bring the market to an equilibrium price by drawing in contra-side interest.

Once an order lock-in period has expired, the process determines whether the imbalance was reduced to zero. If so, the price for all securities is set to be simply the midpoint between the opening bid/offer of the NBBO (National Best Bid/Offer). If the imbalance was not eliminated, then the process applies relative indications priced at the NBBO plus a price improvement value  $\pi$ .

Contrary to the claimed invention, Madoff does not determine from priced portions of entered orders whether there exists a single price at which a maximum number of shares will be traded. Instead, Madoff relies on the market to bring itself to price equilibrium through the transmission of the imbalance messages and anticipated share allocation messages, and then uses the midpoint of the NBBO quote. If this fails, Madoff then simply uses the NBBO price plus a price improvement factor  $\pi$  as the opening price.

Lupien does not cure the basic deficiency of Madoff as regards the claimed invention. Lupien does not disclose any selection of a single price at which to conduct a batch auction of securities. Lupien is directed to an automated trading system that is used by investment managers, whereby trades are executed directly between users of the system and external markets. Manifestly, an investment manager cannot determine the price of a security, because the investment manager is a participant in the market, i.e., is seeking to make profits by trading securities. Similarly, the trading system cannot determine the price that the external market will set.

The cited sections of Lupien relied upon in the Office action relate simply to the display of current market information on a trader's display monitor (Fig. 6), and the matching of orders (Fig. 8) when a received buy order and a received sell order agree on security name, price, size and terms of the trade. No determination of any price at which to conduct a batch auction is disclosed by Lupien. Therefore, no combination of Madoff with Lupien could result in the claimed invention as a matter of law.

Serial No. 09/496,188

May 26, 2004

Page 10

**Conclusion**

In view of the foregoing, claims 1-21 are submitted to be now in condition for allowance. Favorable reconsideration of this application and the issuance of a Notice of Allowance are earnestly solicited.

Please charge any fee or credit any overpayment pursuant to 37 CFR 1.16 or 1.17 to Deposit Account No. 02-2135.

RESPECTFULLY SUBMITTED,					
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